

**KENTUCKY DEPARTMENT OF INSURANCE
4-HOUR EDUCATION AND TRAINING OUTLINE FOR PRODUCERS
ANNUITY SUITABILITY**

1) Required Topics

- a) The types of annuities and various classifications of annuities
- b) Identification of the parties to an annuity
- c) The manner in which fixed, variable, and indexed annuity contract provisions affect consumers
- d) The application of income taxation of qualified and non-qualified annuities
- e) The primary uses of annuities
- f) Appropriate sales practices, replacement, and disclosure requirements

2) Prohibited Topics

- a) Marketing information
- b) Sales techniques
- c) Specific information about a particular insurer's product

3) Suitability Duties of Producer

- a) In reaching a conclusion that an annuity product or exchange is suited for a consumer, there shall be a reasonable basis to determining that in reaching that decision all the following have been considered:
 - i) **The consumer has been informed of various features of the annuity, including:**
 - (1) The potential surrender period and surrender charge
 - (2) Potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity
 - (3) Mortality and expense fees
 - (4) Investment advisory fees
 - (5) Potential charges for and features of riders
 - (6) Limitations on interest returns, insurance, and investment components
 - (7) Market risk
 - ii) **The consumer would benefit from certain features of the annuity, including:**
 - (1) Tax deferred growth
 - (2) Annuitization; or
 - (3) Death or living benefit

- iii) **For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:**
 - (1) The type of annuity
 - (2) The underlying subaccounts to which the funds are allocated at purchase or exchange of the annuity
 - (3) The riders
 - (4) The similar product enhancements
- iv) **If there is an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:**
 - (1) The consumer shall:
 - (a) Incur a surrender charge
 - (b) Be subject to the commencement of a new surrender period;
 - (c) Lose existing benefits including death, living, or other contractual benefits; or
 - (d) Be subject to increased fees, including:
 - (i) Investment advisory fees; or
 - (ii) Charges for riders and similar product enhancements
 - (2) The consumer would benefit from product enhancements and improvements; and
 - (3) The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months
- b) **Suitability Factors:** Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including all the following:
 - i) Age
 - ii) Annual income
 - iii) Financial situation and needs, including the financial resources used for the funding of the annuity
 - iv) Financial experience
 - v) Financial objectives
 - vi) Intended use of the annuity
 - vii) Financial time horizon
 - viii) Existing assets, including investment and life insurance holdings
 - ix) Liquidity needs
 - x) Liquid net worth
 - xi) Risk tolerance
 - xii) Tax status
- c) An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.
- d) **Exemptions to Suitability Duties:** A producer's recommendation of a decision regarding annuities shall be deemed reasonable under all the circumstances actually known to the producer at the time the annuity is issued. The producer shall not have the above-listed obligations to a consumer if:
 - i) A consumer refuses to provide relevant suitability information requested by the licensee and the annuity transaction is not recommended;
 - ii) A consumer decides to enter into an insurance transaction not based on a recommendation of the licensee;

- iii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or
- iv) No recommendation is made

4) Additional Duties of Producers:

- a) A producer shall at the time of sale:
 - i) Make a record of any recommendation subject to section 3(1) of 806 KAR 12:120
 - ii) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and
 - iii) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation

5) Duties of Insurers

- a) An insurer shall establish a system that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:
 - i) The insurer shall maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant insurance licensee training manuals.
 - ii) The insurer shall establish standards for licensee product training and shall maintain reasonable procedures to require its licensees to comply with the requirements of 806 KAR 9:220.
 - iii) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its licensees.
 - iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable.
 - (1) These review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.
 - (2) This electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria.
 - v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable.
 - vi) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- b) Contracting of Insurer Duties
 - i) An insurer may contract for performance of a function, including maintenance of procedures, required under paragraph (a) of this subsection.

- ii) An insurer's supervision system shall include supervision of contractual performance under this subsection. This shall include the following:
 - (1) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed
 - (2) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and
- iii) If an insurer contracts for performance of a function and supervises the performance of the contract, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties.
- c) An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer.
- d) A licensee shall not attempt to influence a consumer from:
 - i) Truthfully responding to an insurer's request for confirmation of suitability information;
 - ii) Filing a complaint; or
 - iii) Cooperating with the investigation of a complaint.
- e) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this administrative regulation provided that:
 - i) The insurer monitors the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - ii) The insurer provides to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system
- f) A licensee shall maintain records documenting compliance with the training requirements which shall be available:
 - i) To the department, if requested; and
 - ii) For a period not less than five (5) years.
 - iii) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.